

Message Text

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ACTION EB-07

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FM AMCONSUL HONG KONG

TO SECSTATE WASHDC 5058

INFO AMEMBASSY LONDON

C O N F I D E N T I A L HONG KONG 5556

E.O. 11652: GDS

TAGS: EAIR, HK, US, VS

SUBJECT: PANAM CLAIM TO AIR VIETNAM 707

SUMMARY: PANAM HAS BEEN TRYING TO REPOSSESS 707 FLOWN IN BY REFUGEE AIR VIETNAM CREW. A NUMBER OF LOCAL FIRMS, AND THE HKG, HAVE CLAIMS AGAINST AIR-VIETNAM AND 707 IS ONLY ASSET IN COLONY. COURT HAS ISSUED WARRANT AGAINST CRAFT AND HKG BELIEVES IT MUST WAIT FOR JUDICIAL PROCEEDINGS UNLESS OUT OF COURT SETTLEMENT REACHED. SITUATION FACES POTENTIAL COMPLI-CATION OF PRG DEMAND FOR CRAFT. ACTION REQUESTED: DEPARTMENT PLEASE PROVIDE GUIDANCE. END SUMMARY.

1. ON MAY 3, AN AIR VIETNAM BOEING 707 ARRIVED AT KAI TAK WITH REFUGEES, INCLUDING AIRCREW. THE PLANE (MANUFACTURER'S SERIAL NO. 17683) WAS SOLD TO AIR VIETNAM BY PANAM IN DECEMBER, 1973 FOR 20 INSTALLMENTS OF US\$50,000 EACH, EXCEPT FINAL INSTALLMENT OF \$20,000, DUE ON AUGUST 13, 1975. LOCAL PANAM OFFICE UNSURE WHEN LATEST INSTALLMENT PAID. IF MARCH 13, PANAM STILL OWED \$220,000; IF APRIL 13, THEN \$170,000. ON THE BASIS OF THE MORTGAGE, PANAM HAS BEEN TRYING TO REPOSSESS THE PLANE AND TO FLY IT OUT VIA A SOUTHERN ROUTE SERIES OF FIR'S.

2. EARLY EFFORTS WERE UNFRUITFUL BECAUSE OF A NUMBER OF LOCAL
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CLAIMS AGAINST AIR VIETNAM, INCLUDING BACK LANDING FEES

DUE TO HKG. PANAM WAS WILLING TO PAY LANDING FEES INCURRED BY PLAN IN QUESTION ONLY, BUT FELT HKG BILL OF US\$50,000 WAS TOO STEEP.

3. WHILE MATTER STILL PENDING, HMG RECOGNIZED PRG CREATING FURTHER COMPLICATING POSSIBILITY THAT PRG MAY CLAIM CRAFT AS IT HAS CLAIMED RVN PROPERTY ELSEWHERE IN THE AREA. (N.B. QUESTION OF SOVEREIGN IMMUNITY DOES NOT APPEAR TO ARISE BECAUSE EVEN THOUGH GRVN OWNED A REPORTED 92PERCENT OF THE SHARES, AIR VIETNAM IS/WAS A CORPORATION). HKG, ON ONE HAND WOULD LIKE TO ENJOY RESONABLE RELATIONS WITH PRG TO OBTAIN OVERFLIGHT RIGHTS FOR CATHAY PACIFIC, WHOSE CHAIRMAN HAS A SEAT IN THE HKG LEGISLATIVE COUNCIL; ON THE OTHER HAND, THEY DON'T WISH TO BE TOO CHUMMY IN PART BECAUSE SPECIAL BRANCH IS VERY LOATHE TO SEE ANOTHER COMMUNIST CONSULATE HERE.

4. ON FRIDAY, MAY 16, TWO OF AIR VIETNAM'S PRINCIPAL CREDITORS, PACIFIC AERO PRODUCTS, BURBANK, CALIF., AND GOURMET ENTERPRISES, A LOCAL CATERER, SUBMITTED WRITS FOR HK\$511,965 AND HK\$600,000 RESPECTIVELY. THE COURT HAS ISSUED WARRANTS AGAINST THE PLANE AND APPOINTED A BAILIFF. ADDITIONAL WRITS WILL PROBABLY BY SUBMITTED BY THE MIRIMAR HOTEL, HAECO, HATS, CATHAY PACIFIC, AND, POSSIBLY, AIR VIETNAM'S LOCAL EMPLOYEES SEEKING BACK PAY. THE HKG NOW BELIEVES THE MATTER IS UP TO THE COURTS AND IS BEYOND THE POWER OF THE EXECUTIVE. THE ONLY PREROGATIVE STILL ENJOYED BY THE EXECUTIVE IS FOR THE DIRECTOR OF CIVIL AVIATION TO APPROVE OR DISAPPROVE A FLIGHT PLAN; EVEN THIS IS OPEN TO DOUBT GIVEN THE INSTITUTION OF JUDICIAL PROCEDURES.

5. PANAM'S OPTIMUM POSITION IS TO OBTAIN REPOSSESSION OF THE PLANE AND FLY IT OUT. ITS OPTIMUM FALL BACK IS FOR THE PRG TO ASSUME TITLE AND PAY PANAM THE BALANCE DUE. PANAM HEADQUARTERS HAS CABLED THE LOCAL OFFICE TO INQUIRE WHETHER THE CONGEN HAS MADE ACTIVE REPRESENTATIONS TO THE HKG, WHICH WE INTERPRET AS A REQUEST TO DO SO.

6. THE SITUATION HAS A NUMBER OF POSSIBLE OUTCOMES, INCLUDING:
(A) THE COURT COULD AWARD THE PLANE TO PANAM AS MORTGAGE.
(THE ATTORNEY GENERAL'S OFFICE HERE BELIEVES THIS IS ONLY A REMOTE POSSIBILITY BECAUSE THE MORTGAGE REFERS TO AIR VIETNAM
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AS A "CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE REPUBLIC OF SOUTH VIETNAM". EVEN SO, SOME 20 YEARS AGO, THE PRIVY COUNCIL AWARDED AIRCRAFT CLAIMED BY THE PRC TO THE GRC.)

(B) THE COURT COULD ORDER THE AUCTION OF THE PLANE AND PAYMENT TO CREDITORS. PANAM MIGHT RECEIVE COMPENSATION AS A CREDITOR.

(C) THE PRG MIGHT NEGOTIATE WITH THE CREDITORS (INCLUDING

PANAM) AND MAKE SOME SORT OF SETTLEMENT.

7. ACTION REQUESTED: PLEASE ADVISE THE CONGEN AS TO
STANCE IT SHOULD ADOPT.
CROSS

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